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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1124 OF 2007

The Commissioner,
Nashik Municipal Corporation ... Petitioner

V/s

Dhanraj Jagannath Bendale ... Respondent

Mrs. Manisha Shekhar for the petitioner.

Mr. S.M.Dharap with Mrs. Anjali Helekar for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 26TH SEPT., 2007.

P.C.:

1. This petition has been filed to challenge the order dated 24.11.2005 passed by the Industrial Court in Complaint (ULP) No. 111 of 2002. The petition has been sworn on 8.6.2006 and filed on 31.1.2007. No averments are made in the petition as to why there has been a delay in filing the petition. An affidavit has been filed subsequently to explain the delay. The only reason mentioned therein is that the advocate who was entrusted with the matter was elevated as a Judge of this Court and, therefore, no action could be taken in

the matter. This explanation, in my view, is not sustainable. The advocate was elevated to the Bench of this Court in September, 2006. In any event, the petition was sworn on 8.6.2006 after which it could have been filed immediately. The petitioner waited for a further period of six months till 31.7.2007 for filing the petition. In my view, therefore, the delay of a year and two months does not deserve to be condoned.

2. Apart from this, on merits as well, the petitioner is unable to point out any defect in the order of the Industrial Court. By the Government Resolution dated 12.9.1995 all employees of the Corporation were entitled to a pay rise of 10% of the salary payable on 1.1.1986 and pay fixation accordingly. The respondent employee was employed initially with the Maharashtra Water Supply and Sewerage Board. The employees of the Board were taken over by the petitioner Corporation by an agreement of July 1992 signed under Section 2(P) read with Section 18(1) of the Industrial Disputes Act, the services of the employees of the Board were treated as continuous service with the petitioner Corporation. The respondent employee was, therefore, given the benefit of the Government Resolution. However, because of an audit report, this benefit was sought to be withdrawn. Complaint (ULP) No. 111 of 2002 was filed by the

respondent workman under Items 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act contending that the withdrawal of the 10% rise was illegal and contrary to the Government Resolution as well as the settlement. The Industrial Court, in my view, has rightly allowed the complaint. The contention of the petitioner that only those employees who were on their pay roll on 1.1.1986 were entitled to pay rise is not borne out by the Government Resolution. In my view, therefore, there is no error of law in the impugned order nor is it perverse.

3. Petition rejected.

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